

REMARKS

Claims 19-24, 26, 27 and 29-35 are pending in the present application after cancellation of claims 25, 28 and 36. Claims 19, 29 and 31 have been amended.

In response to the Examiner's objection to claims 32-36, Applicants have amended the parent claim 31 to recite a "device," thereby eliminating the inconsistency between claim 31 and its dependent claims 32-36.

Claims 19 to 36 were rejected under 35 U.S.C. § 103(a) as unpatentable over the asserted Ertl et al., ("Ertl") U.S. Patent Application No. 2002/0149184 in view of Kohler et al., ("Kohler") U.S. Patent No. 7,245,741.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements" in the manner claimed. See KSR Int'l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Id., at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 19 has been amended to include the features previously recited in claims 25 and 28, i.e., amended claim 19 recites, in relevant parts, “evaluating the 3D image of the seat with respect to at least one of the occupancy state of the seat and an occupancy type of the seat, wherein the evaluation includes consideration of the 3D pattern of the seat, and wherein if a deviation between the 3D image and the 3D pattern exceeds a predetermined minimum value for the evaluation, a determination of the occupancy state is made indicating that the seat is occupied, and wherein the determination of the occupancy state is regarded as conclusive only if substantially identical evaluation result is obtained over a plurality of sequential time points.” Claim 31 has been amended to recite substantially similar features as the above-recited features of claim 19.

In support of the rejection, the Examiner contends that Fig. 1, col. 2, l. 26-58, and col. 4, l. 52-64 of Kohler teach the limitations previously contained in claim 25, i.e., “wherein if a deviation between the 3D image and the 3D pattern exceeds a predetermined minimum value for the evaluation, a determination of the occupancy state is made indicating that the seat is occupied.” However, there is no reasonable reading of any of the cited portion of Kohler that would suggest any comparison between (a) a deviation between the 3D image and the 3D pattern and (b) a predetermined minimum value for the evaluation. In fact, there isn’t any mention of any minimum value for an evaluation, let alone any mention of a deviation between a 3D image and a 3D pattern.

Independent of the above, the Examiner contends that paragraph [0046] of Ertl teaches the limitation previously contained in claim 28, i.e., “wherein the determination of the occupancy state is regarded as conclusive only if substantially identical evaluation result is obtained over a plurality of sequential time points.” However, the text of paragraph [0046] of Ertl has absolutely nothing to do with the claimed features, and there is clearly no suggestion of qualifying the determination of the occupancy state as conclusive only if the evaluation involving “a deviation between the 3D image and the 3D pattern exceeds a predetermined minimum value for the evaluation” over a plurality of sequential time points produces a substantially identical evaluation result.

Accordingly, claims 19 and 31, as well as their dependent claims 20-24, 26, 27, 29, 30 and 32-35, are allowable over Ertl and Kohler.

CONCLUSION

In view of the above, it is respectfully submitted that all of the presently pending claims 19 to 24, 26, 27 and 29 to 35 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since they have been obviated. Since all issues raised have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully Submitted,

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